

BYE-LAWS

BYE-LAW 3: DISCIPLINARY PROCEEDINGS

Effective from 12 October 2021.



1. DEFINITIONS

Terms defined in the Statute shall have the same meaning when used in this Bye-Law. In addition, the definitions below apply for the purposes of this Bye-Law.

“Appeals Board” means the Appeals Board set up in accordance with the Statute.

“Chairperson of the Appeals Board” means the Chairperson of the Appeals Board appointed in accordance with the Statute.

“Chairperson of the Disciplinary Committee” means the Chairperson of the Disciplinary Committee appointed in accordance with the Statute.

“Complainant” means any person, whether a Member of the Institute or otherwise who formally registers a complaint with the Institute.

“Complaint” means a written communication received by the Institute indicating that a Member/Student may have become liable to disciplinary action under this Bye-Law.

“Deputy Chairperson of the Appeals Board” means the Deputy Chairperson of the Appeals Board appointed in accordance with the Statute.

“Deputy Chairperson of the Disciplinary Committee” means the Deputy Chairperson of the Disciplinary Committee appointed in accordance with the Statute.

“Disciplinary Affairs Coordinator” means the person entrusted with the administrative role to liaise between the Member/Student and the Institute after investigations have been concluded.

“Disciplinary Committee” means the Disciplinary Committee set up in accordance with the Statute.

“Disciplinary Pool” means the Disciplinary Pool appointed in accordance with the Statute.

“Legal Officer of the Institute” means the legal officer of the Institute, whether employed by the Institute or otherwise.

“Service” means the delivery of a communication via email with a delivery receipt, or registered mail, or by any other written procedure which provide a confirmation of receipt.

2. LIABILITY TO DISCIPLINARY ACTION

A Member/Student may be liable to disciplinary action under this Bye-Law in any of the following cases:

- (i) if in the course of carrying out professional work or otherwise, he/she has committed any act or default likely to bring discredit on himself/herself, the Institute or the profession of accountancy such as:
 - (a) if he/she has committed misconduct by committing any act or default likely to bring discredit or so as to fall significantly short of the standards reasonably expected; or

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- (b) if he/she has demonstrated professional incompetence by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected;
- (ii) if he/she is charged with any criminal offence punishable by imprisonment by a competent Court or if he/she has been convicted of an indictable offence in a Court of competent jurisdiction;
- (iii) if he/she is suspected to have breached the Institute's Code of Ethics;
- (iv) if he/she is suspected of having breached or has breached the Institute's Statute and/or Bye-Laws or failed to comply with any instructions, direction or requirements made, given or imposed under him/her by the Institute;
- (v) if he/she has been disciplined or sanctioned by another professional body or by a relevant regulatory authority and/or action has been taken against him/her by any such body/authority;
- (vi) if, at any time, he/she has performed any regulated activities as defined in the Accountancy Profession Act and related Regulations and other legislative frameworks when not duly authorised.

For the avoidance of doubt, a person shall be liable to disciplinary action in accordance with the Bye-laws and regulations in force at the time the matter(s) complained of took place. All disciplinary proceedings, however, shall be conducted in accordance with the Bye-laws and regulations in force at the time of such proceedings.

3. COMPLAINTS

Any person may bring to the attention of the Institute any facts or matters indicating that a Member/Student may have become liable to disciplinary action in terms of this Bye-Law.

A complaint against a Member/Student shall be made in writing, signed by the complainant, and sent to the Institute, addressed to the CEO, along with any supporting documentation. The Institute will not consider complaints submitted in stages as it is important for it to be able to take into account the overall conduct of the Member/Student.

Both Council and the CEO may raise a complaint *ex officio*.

Where the complainant opts to withdraw the complaint after its submission, the Institute may nevertheless proceed with an investigation.

4. SCREENING OF COMPLAINTS AND SETTING UP OF THE INVESTIGATING COMMITTEE

As a rule, complaints received shall be assessed by the CEO and Officers, or in the eventuality of a conflict of interest, by any other person to whom such role is delegated, in order to ascertain whether there exist *prima facie* sufficient grounds for further investigation.

If the CEO and Officers or the delegated person deem that there are *prima facie* sufficient grounds for the matter to be investigated further, the CEO shall proceed to inform Council and request Council to appoint two (2) or more Officers or, in the eventuality of conflict of interest or for any other valid

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reason, any other two (2) or more Members to assist in the investigation. The CEO and the two (2) or more Officers or Members appointed as aforesaid shall be referred to as the “Investigating Committee”.

The role of the Investigating Committee is to investigate the Complaint taking into consideration all evidence put before it and decide whether the case requires subsequent disciplinary action.

The persons appointed to form part of the Investigating Committee shall appoint a Chairperson from amongst themselves.

The Investigating Committee shall be assisted by the Legal Officer of the Institute. Moreover, the Investigating Committee may put forward a request to the Officers’ Committee to appoint experts and engage any other legal advisors to assist it in carrying out its function. In the eventuality that the said Committee has a conflict of interest, the matter shall be referred to Council. In taking its decision, the Officers’ Committee or Council is obliged to ensure that the Investigating Committee is provided with the necessary assistance required. The appointment of the said experts/engagement of other legal advisors will only take place after the relevant approval from the Officers’ Committee or Council is obtained.

The Legal Officer of the Institute, the experts and legal advisors shall not have any voting rights.

5. CASES WHERE NO FURTHER INVESTIGATION IS REQUIRED

Where the Member/Student has been convicted of an indictable offence by a competent Court or has been disciplined/sanctioned by another professional body or by a relevant regulatory authority and/or action has been taken against him/her by any such body/authority, the Investigating Committee shall take the evidence and conclusions reached by the relevant competent court/professional body/regulatory authority as final and as conclusive evidence of a breach by the Member/Student of Article 2(ii) and/or Article 2(v) above. In such an eventuality, the Investigating Committee shall proceed with the issuance of the charge without any further investigations.

6. INVESTIGATION OF CLAIMS BY THE INVESTIGATING COMMITTEE

In conducting its investigations, the Investigating Committee may decide to appoint ad hoc sittings in order to discuss the Complaint or to request further information or collect evidence from the Member/Student.

Sittings shall be attended by the Investigating Committee, the Legal Officer of the Institute, who shall provide any necessary legal guidance and where applicable the experts and the other legal advisors.

All sittings of the Investigating Committee may be audio recorded. Proper minutes of all sittings shall be recorded and signed by the Legal Officer of the Institute.

The Investigating Committee shall gather any information pertinent to the Complaint to which it may have reasonable access. It may request information from any Member/Student or third party, *inter alia*, by access to books, records and documents related to the Complaint and oral/written submissions from both the Member/Student, as well as the Complainant. It shall be the duty of the Member/Student and of the Complainant to fully collaborate with the Investigating Committee for these purposes.

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Following investigations of the Complaint, the Investigating Committee shall either:

- (a) close the complaint; or
- (b) resolve the complaint; or
- (c) issue a charge.

All decisions of the Investigating Committee shall be on a majority basis. If the Investigating Committee fails to reach a majority decision, the Chairperson of the said Committee shall have a casting vote.

The Investigating Committee shall draw up a report which shall include all pertinent information collected in the course of an investigation including any decisions taken.

7. POST-INVESTIGATION ACTIONS

7.1 CLOSE THE COMPLAINT

If the Investigating Committee determines that no further disciplinary action is required, the Investigating Committee shall dismiss the case against the Member/Student and no further action shall be taken.

The CEO, representing the Investigating Committee, shall communicate this decision in writing, giving reasons for such a decision, to the Member/Student, Complainant and Council respectively.

7.2 RESOLUTION OF THE COMPLAINT

If the Investigating Committee is of the opinion that the matter can be settled, it shall discuss and negotiate with the Member/Student in order to find an acceptable solution. If the attempt is successful, no further action shall be required, and the case is closed.

The CEO, representing the Investigating Committee, shall communicate this decision in writing, giving reasons for such a decision, to the Member/Student, Complainant and Council respectively.

7.3 ISSUE A CHARGE

If the Investigating Committee determines that the complaint is sufficiently serious to warrant further proceedings, a Charge is issued. The Charge shall be signed by the Chairperson of the Investigating Committee, or, in his/her absence by any other member of the Investigating Committee.

The Charge shall include:

- (a) the terms of the Complaint;
- (b) a summary of the findings of the Investigating Committee;
- (c) the alleged act or omission attributed to the Member/Student in line with Article 2.

The Charge shall be presented to Council and served on the Chairperson of the Disciplinary Committee, once the latter declares that he/she has no conflict of interest in accordance with the Statute.

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8. SETTING UP OF THE DISCIPLINARY COMMITTEE AND COMMUNICATION WITH MEMBER/STUDENT

Upon being served with the Charge, the Chairperson of the Disciplinary Committee shall set up the Disciplinary Committee in the manner stipulated in the Statute. The Chairperson of the Disciplinary Committee will communicate the determined date, time and place of the hearing to the Disciplinary Affairs Coordinator.

By not later than forty-five (45) calendar days before the date of the hearing, the Disciplinary Affairs Coordinator shall send out the Charge to the Member/Student along with the date, time and place of the hearing and procedures for such hearing.

The Member/Student must send his/her reply addressed to the Chairperson of the Disciplinary Committee to the Disciplinary Affairs Coordinator by not later than fifteen (15) calendar days from the date of service of the communication, indicating whether he/she will be:

- (a) attending the hearing or appointing another person/s to appear on his/her behalf;
- (b) assisted by a lawyer or other professional and if so his/her details;
- (c) calling any witnesses and if so their details;
- (d) accepting all or any of the allegations made.

Should the Member/Student (a) fail to reply or (b) be unable to attend the hearing and fail to appoint another person/s to appear on his/her behalf, the Disciplinary Committee has the discretion to proceed to decide the case *in camera* and on the basis of the written submissions made by the Member/Student.

9. THE HEARING AND DECISION OF THE DISCIPLINARY COMMITTEE

Hearings shall be audio recorded.

During the hearing, the Disciplinary Committee shall follow the procedures for Disciplinary Committee hearings issued by the Institute.

At the conclusion of the hearing, which may take more than one sitting, the Disciplinary Committee shall deliberate *in camera* to consider its decision. In case a lawyer is assisting the Disciplinary Committee as cited in the Statute, committee members may consult with him/her. The lawyer shall have no voting rights.

All decisions by the Disciplinary Committee shall be taken by means of a majority vote of the Committee members. In case of equality of votes, the Chairperson of the Disciplinary Committee shall have the casting vote.

In all cases, the decision of the Disciplinary Committee shall be in writing and shall contain the reasons supporting the decision and, if applicable, any sanction which the Disciplinary Committee deems appropriate.

Such decision shall be forwarded to the Member/Student and to the Investigating Committee by the Chairperson of the Disciplinary Committee.

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Any decision to reprimand, suspend or expel a Member/Student under this Bye-law shall take effect upon the day on which it is made.

A full detailed report including all pertinent information and the decision taken shall be prepared by the Disciplinary Committee.

10. SANCTIONS

The sanctions which the Disciplinary Committee may impose on a Member/Student are the following:

- (i) reprimand;
- (ii) suspension;
- (iii) fine, penalty or administrative charge;
- (iv) expulsion from the Institute.

The sanctions imposed by the Disciplinary Committee may be cumulative.

Any pecuniary amount must be settled within fifteen (15) days. Failure to pay such pecuniary amount within the stipulated timeframe will result in automatic expulsion.

A suspended or expelled Member shall:

- (a) be prohibited from using his/her designatory letters;
- (b) not be permitted to attend and vote at any General Meeting;
- (c) not be eligible for membership benefits; and
- (d) return every certificate of membership held by him/her as issued by the Institute.

A suspended Student shall lose all the privileges stipulated in the Students Bye-Law and the right to continue his/her studies.

11. GROUNDS FOR APPEALING THE DISCIPLINARY COMMITTEE'S DECISION

Both the Member/Student and the Investigating Committee have the right to appeal to the Appeals Board on any of the following grounds:

- (i) the Disciplinary Committee made an error of fact or law, which would have altered one or more of the Committee's findings;
- (ii) the Disciplinary Committee misinterpreted the Institute's Statute or Bye-Laws or any other regulations, measures, technical standards or guidance, which would have altered one or more of the Committee's findings;
- (iii) the Disciplinary Committee failed to take into account certain relevant evidence brought before the said Committee, which would have altered one or more of the Committee's findings;
- (iv) one or more of the Disciplinary Committee's sanctions is disproportionate and/or unreasonable.

12. APPLICATION FOR AN APPEAL

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The appellant shall submit his/her request to appeal the decision of the Disciplinary Committee together with the reasons in support of such a request by not later than twenty (20) working days from the date of Service of the decision. Such request shall be made in writing, addressed to the Chairperson of the Appeals Board and passed on to the Disciplinary Affairs Coordinator.

The appeal shall be presented to the Chairperson of the Appeals Board, once the latter declares that he/she has no conflict of interest in accordance with the Statute and to the other party.

13. SETTING UP OF THE APPEALS BOARD AND COMMUNICATION WITH THE MEMBER/STUDENT

Upon being served with the request for appeal, the Chairperson of the Appeals Board shall set up the Appeals Board in the manner stipulated in the Statute. The Chairperson of the Appeals Board will communicate the determined date, time and place of the hearing to the Disciplinary Affairs Coordinator.

By not later than forty-five (45) calendar days before the date of the hearing, the Disciplinary Affairs Coordinator shall communicate such details to the appellant and the other party and supply them with the procedures for such hearing.

Both parties must reply to the Chairperson of the Appeals Board through the Disciplinary Affairs Coordinator by not later than fifteen (15) calendar days from the date of service of the communication, indicating whether they will be attending the hearing or appointing another person/s to appear on their behalf, as applicable.

Should the appellant be unable to attend the hearing and fail to appoint another person/s to appear on his/her behalf, the Appeals Board has the discretion to proceed to decide the case *in camera* and on the basis of the written submissions made by the Member/Student.

14. THE APPEALS HEARING AND DECISION

Hearings shall be audio recorded.

During the Hearing, the Appeals Board shall follow the procedures for Appeals hearings issued by the Institute.

At the conclusion of the hearing, which may take more than one sitting, the Appeals Board shall deliberate *in camera* to consider its decision. In case a lawyer is assisting the Appeals Board as cited in the Statute, Board members may consult with him/her. The lawyer shall have no voting rights.

All decisions by the Appeals Board shall be taken by means of a majority vote of the Board members. In case of equality of votes, the Chairperson of the Appeals Board shall have the casting vote.

The decision of the Appeals Board shall be to affirm, vary or rescind the decision of the Disciplinary Committee.

In all cases, the decision of the Appeals Board shall be in writing and shall contain the reasons supporting its decision. The decision delivered by the Appeals Board shall be final and binding.

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The Disciplinary Affairs Coordinator shall communicate the decision of the Appeals Board to the Member/Student and to the Investigating Committee.

Any decision taken by the Appeals Board under this Bye-law shall take effect upon the day on which it is taken.

A full detailed report including all pertinent information and the decision taken shall be prepared by the Appeals Board.

15. DISCLOSURE OF INFORMATION BY THE INSTITUTE

Once all proceedings have been concluded, the name of any Member/Student who has been sanctioned and the sanction/s imposed shall be published by the Institute on its website and in any other publications of the Institute. The time period for which such publications shall be maintained is as follows:

- (a) Reprimands and fines: for a period of up to 5 (five) years;
- (b) Suspension: for period of time that the Member/Student is suspended;
- (c) Expulsion: for the lifetime of the Member/Student.

The Institute reserves the right to inform other professional bodies and regulatory bodies of any disciplinary action and/or sanctions taken in relation to any Member/Student.

16. RECORDS

All records of disciplinary proceedings shall be retained for the period stipulated in the Institute's Data Retention Policy.